



March 13, 2009

ENGROSSED HOUSE BILL No. 1081

DIGEST OF HB 1081 (Updated March 11, 2009 12:57 pm - DI 106)

Citations Affected: IC 32-31.

Synopsis: Requires the owner or former owner of residential real property containing four or fewer rental units to notify the tenants if a judgment of foreclosure is entered concerning the property, and permits a tenant to terminate a rental agreement if a judgment of foreclosure is entered against the owner or former owner. Authorizes a tenant to bring a civil action if the owner or former owner does not comply with the notice provisions, and provides that a tenant who terminates a rental agreement early in compliance with the statute does not forfeit the damage deposit due to the early termination, but may still be liable for actual damages. Specifies that the notice provisions do not apply to: (1) an action in which the plaintiff states in the complaint that the foreclosure will not affect the rights of a nondefaulting tenant; and (2) real property where a receiver has been appointed. Makes conforming amendments.

Effective: July 1, 2009.

Day, Pryor

(SENATE SPONSORS — LUBBERS, BRODEN, BRAY, LANANE,
RANDOLPH)

January 7, 2009, read first time and referred to Committee on Judiciary.
February 5, 2009, amended, reported — Do Pass.
February 9, 2009, read second time, amended, ordered engrossed.
February 10, 2009, engrossed. Read third time, passed. Yeas 55, nays 41.

SENATE ACTION

February 19, 2009, read first time and referred to Committee on Judiciary.
March 12, 2009, amended, reported favorably — Do Pass.

C
o
p
y

EH 1081—LS 6848/DI 106+



March 13, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1081

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-31-3-13 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. A security deposit
3 may be used only for the following purposes:

4 (1) To reimburse the landlord for actual damages to the rental unit
5 or any ancillary facility that are not the result of ordinary wear and
6 tear.

7 (2) To pay the landlord for:

8 (A) all rent in arrearage under the rental agreement; and

9 (B) rent due for premature termination of the rental agreement
10 by the tenant. **However, this clause does not apply to a**
11 **rental agreement terminated in accordance with**
12 **IC 32-31-8-7.**

13 (3) To pay for the last payment period of a residential rental
14 agreement if a written agreement between the landlord and the
15 tenant stipulates that the security deposit will serve as the last
16 payment of rent due. **However, if a rental agreement is**
17 **terminated in accordance with IC 32-31-8-7, this subdivision**

EH 1081—LS 6848/DI 106+



C
o
p
y

applies only to the prorated rent due, if any.

(4) To reimburse the landlord for utility or sewer charges paid by the landlord that are:

(A) the obligation of the tenant under the rental agreement; and

(B) unpaid by the tenant.

SECTION 2. IC 32-31-8-1, AS AMENDED BY P.L.62-2008, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided in **section 7 of this chapter or in** subsection (b), this chapter applies only to dwelling units that are let for rent under a rental agreement entered into after June 30, 2002.

(b) This chapter does not apply to dwelling units that are let for rent with an option to purchase under an agreement entered into before July 1, 2008.

SECTION 3. IC 32-31-8-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) **This section applies to rental agreements entered into, extended, or renewed after June 30, 2009.**

(b) **This section applies only to real property containing one (1), two (2), three (3), or four (4) rental units that is the subject of a judgment of foreclosure under IC 32-30-10-5. However, this section does not apply if:**

(1) a receiver is appointed in the foreclosure action under IC 32-30-5; or

(2) if the plaintiff asking foreclosure states in its complaint that the foreclosure will not affect the rights of a tenant not in default of the tenant's lease.

(c) As used in this section, "former landlord" means the landlord at the time the judgment of foreclosure was entered.

(d) As used in this section, "former owner" means the owner at the time the judgment of foreclosure was entered.

(e) Not later than ten (10) days after the judgment of foreclosure on real property described in subsection (b) is entered, the former owner of the real property shall provide each tenant with written notice of:

(1) the judgment of foreclosure; and

(2) the tenant's rights under this section;

by registered or certified mail.

(f) A tenant of real property described in subsection (b) has the right to terminate the tenant's rental agreement upon written notice delivered to the former landlord. Termination of a rental

C
o
p
y



1 agreement under this subsection is effective on a date established
2 by the tenant, but not earlier than:

- 3 (1) ten (10) days after the tenant receives the written notice
4 described in subsection (e); or
5 (2) ten (10) days after the date the judgment of foreclosure is
6 entered, if the tenant does not timely receive the written
7 notice described in subsection (e).

8 (g) A tenant who terminates a rental agreement under this
9 section is liable for all rent and other charges due under the rental
10 agreement to the effective date of termination, in an amount that
11 is prorated to the effective date of termination. Rent due under this
12 subsection is payable at the time it would have been payable under
13 the terms of the rental agreement being terminated.

14 (h) Except for the rent and other charges payable as described
15 in subsection (g), a tenant who terminates a rental agreement
16 under this section is not liable for any other rent or charges solely
17 because of the early termination of the rental agreement. However,
18 a tenant may be liable for other charges if the tenant causes
19 damage to the rental premises.

20 (i) A tenant may bring an action in any court having jurisdiction
21 to enforce an obligation of a former owner or a former landlord
22 under this section, or to obtain a remedy for the former owner's
23 noncompliance. If the tenant prevails in an action brought under
24 this section, the tenant may recover:

- 25 (1) actual and consequential damages;
26 (2) reasonable attorney's fees and court costs; and
27 (3) reasonable relocation expenses.

28 (j) A waiver of this chapter by a landlord or current or former
29 tenant, by contract or otherwise, is void.

C
O
P
Y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1081, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 15.

Page 2, line 16, delete "32-31-8-7" and insert "32-29-7-3.3".

Page 2, line 18, delete "7." and insert "3.3".

Page 2, line 20, delete "(1) or" and insert "(1), two (2), three (3), or four (4)".

Page 2, line 21, delete "more".

Page 2, line 21, delete "is" and insert "are".

Page 2, line 21, delete "judgment of".

Page 2, line 21, after "foreclosure" insert "complaint".

Page 2, delete lines 23 through 42, begin a new paragraph and insert:

"(c) This section does not apply if a receiver is appointed under IC 32-30-5.

(d) Not later than ten (10) days after a foreclosure complaint on real property described in subsection (b) is filed, the plaintiff seeking foreclosure shall provide each tenant with written notice of:

(1) the rights of tenants under this section; and

(2) the address and telephone number of the plaintiff seeking foreclosure and the landlord for use in all communications between the tenant and the landlord or the plaintiff seeking foreclosure;

by registered mail, certified mail, or personal delivery.

(e) A tenant may file a petition or request to:

(1) intervene in a foreclosure action under this section; and

(2) allow rent payments to be deposited:

(A) with the court; or

(B) in an escrow account;

until the parties agree on or the court determines the proper disposition of the rental payments.

(f) A court that holds rental payments or allows rental payments to be deposited in an escrow account under subsection (e) may allow a portion of rental payments to be used to pay for expenses related to the real property described in subsection (b).

(g) A tenant who does not receive a notice under subsection (d) may not be evicted from the tenant's rental unit until ninety (90)

C
o
p
y



days after the tenant has received the notice described in section 3.6(d) of this chapter, unless the tenant has failed to pay rent or comply with other obligations of the rental contract or agreement.

SECTION 4. IC 32-29-7-3.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.6. (a) This section applies to rental agreements entered into or renewed after June 30, 2009.

(b) This section applies to real property containing one (1) or more rental units that is the subject of a judgment of foreclosure under IC 32-30-10-5.

(c) This section does not apply if a receiver is appointed under IC 32-30-5.

(d) Not later than ten (10) days after the judgment of foreclosure on real property described in subsection (b) is entered, the plaintiff seeking foreclosure shall provide each tenant with written notice:

- (1) of the rights of tenants under this section;
- (2) of the address and telephone number of the plaintiff seeking foreclosure and the landlord for use in all communications between the tenant and the landlord or the plaintiff seeking foreclosure; and
- (3) that the plaintiff seeking foreclosure has foreclosed on the real property described in subsection (b);

by registered mail, certified mail, or personal delivery.

(e) A tenant may not be evicted from the tenant's rental unit until sixty (60) days after the tenant has received the notice described in subsection (d), unless the tenant has failed to pay rent or comply with other obligations of the rental contract or agreement.

SECTION 5. IC 32-29-7-3.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.8. If a tenant is evicted from the tenant's rental unit and did not receive a notice under section 3.3 or 3.6 of this chapter, the tenant may:

- (1) bring an action in any court having jurisdiction to enforce an obligation of an owner or landlord; and
- (2) recover:
 - (A) actual damages;
 - (B) reasonable attorney's fees and court costs; and
 - (C) reasonable relocation expenses."

C
o
p
y



Delete page 3.
 Renumber all SECTIONS consecutively.
 and when so amended that said bill do pass.
 (Reference is to HB 1081 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 6, nays 4.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1081 be amended to read as follows:

Page 3, line 5, after "3.8." insert "**(a) This section does not apply if a tenant is evicted from the tenant's rental unit because the tenant failed to pay rent or comply with other obligations of a rental contract or agreement.**

(b)".

(Reference is to HB 1081 as printed February 6, 2009.)

DAY

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1081, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 32-31-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. A security deposit may be used only for the following purposes:

- (1) To reimburse the landlord for actual damages to the rental unit or any ancillary facility that are not the result of ordinary wear and tear.
- (2) To pay the landlord for:
 - (A) all rent in arrearage under the rental agreement; and
 - (B) rent due for premature termination of the rental agreement

EH 1081—LS 6848/DI 106+



C
o
p
y

by the tenant. **However, this clause does not apply to a rental agreement terminated in accordance with IC 32-31-8-7.**

(3) To pay for the last payment period of a residential rental agreement if a written agreement between the landlord and the tenant stipulates that the security deposit will serve as the last payment of rent due. **However, if a rental agreement is terminated in accordance with IC 32-31-8-7, this subdivision applies only to the prorated rent due, if any.**

(4) To reimburse the landlord for utility or sewer charges paid by the landlord that are:

(A) the obligation of the tenant under the rental agreement; and

(B) unpaid by the tenant.

SECTION 2. IC 32-31-8-1, AS AMENDED BY P.L.62-2008, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided in **section 7 of this chapter or in** subsection (b), this chapter applies only to dwelling units that are let for rent under a rental agreement entered into after June 30, 2002.

(b) This chapter does not apply to dwelling units that are let for rent with an option to purchase under an agreement entered into before July 1, 2008."

Page 1, line 1, delete "IC 32-29-7-3.3" and insert "IC 32-31-8-7".

Page 1, line 3, delete "Sec. 3.3." and insert "Sec. 7.".

Page 1, line 4, after "into" insert ", **extended**,".

Page 1, delete lines 5 through 17, begin a new paragraph and insert:

"(b) This section applies only to real property containing one (1), two (2), three (3), or four (4) rental units that is the subject of a judgment of foreclosure under IC 32-30-10-5. However, this section does not apply if:

(1) a receiver is appointed in the foreclosure action under IC 32-30-5; or

(2) if the plaintiff asking foreclosure states in its complaint that the foreclosure will not affect the rights of a tenant not in default of the tenant's lease.

(c) As used in this section, "former landlord" means the landlord at the time the judgment of foreclosure was entered.

(d) As used in this section, "former owner" means the owner at the time the judgment of foreclosure was entered.

(e) Not later than ten (10) days after the judgment of foreclosure on real property described in subsection (b) is entered, the former

C
o
p
y



owner of the real property shall provide each tenant with written notice of:

- (1) the judgment of foreclosure; and
- (2) the tenant's rights under this section;

by registered or certified mail.

(f) A tenant of real property described in subsection (b) has the right to terminate the tenant's rental agreement upon written notice delivered to the former landlord. Termination of a rental agreement under this subsection is effective on a date established by the tenant, but not earlier than:

- (1) ten (10) days after the tenant receives the written notice described in subsection (e); or
- (2) ten (10) days after the date the judgment of foreclosure is entered, if the tenant does not timely receive the written notice described in subsection (e).

(g) A tenant who terminates a rental agreement under this section is liable for all rent and other charges due under the rental agreement to the effective date of termination, in an amount that is prorated to the effective date of termination. Rent due under this subsection is payable at the time it would have been payable under the terms of the rental agreement being terminated.

(h) Except for the rent and other charges payable as described in subsection (g), a tenant who terminates a rental agreement under this section is not liable for any other rent or charges solely because of the early termination of the rental agreement. However, a tenant may be liable for other charges if the tenant causes damage to the rental premises.

(i) A tenant may bring an action in any court having jurisdiction to enforce an obligation of a former owner or a former landlord under this section, or to obtain a remedy for the former owner's noncompliance. If the tenant prevails in an action brought under this section, the tenant may recover:

- (1) actual and consequential damages;
- (2) reasonable attorney's fees and court costs; and
- (3) reasonable relocation expenses.

(j) A waiver of this chapter by a landlord or current or former tenant, by contract or otherwise, is void."

**C
O
P
Y**



Delete pages 2 through 3.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1081 as reprinted February 10, 2009.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 3.

**C
o
p
y**

